IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR THE NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	
	)	DEF. I.D.: 0603015815
JEREMY L. BENSON,	)	CR. A. NOS.: IN06-04-0072 & 0073
	)	
Petitioner.	)	

Date Submitted: December 22, 2008
Date Decided: January 29, 2009

Upon Consideration of
Petitioner's Pro Se Motion for Postconviction Relief.
DENIED.

O R D E R

This 29th day of January, 2009, upon consideration of the Motion for Postconviction Relief brought by Petitioner, Jeremy L. Benson ("Petitioner"), it appears to the Court that:

1. On April 3, 2006, Petitioner was indicted on two counts of Rape in the Fourth Degree, one count of Rape in the Second Degree, and one count of Terroristic Threatening. He pleaded guilty on August 8, 2006, to two counts of Rape in the Fourth Degree and the State entered a *nolle prosequi* on the remaining charges. On November 3, 2006, Petitioner was sentenced to a period of incarceration at Level V,

suspended after serving seven years with decreasing levels of probation to follow. During his sentencing hearing, Petitioner moved to withdraw his guilty plea on the ground that Counsel promised him that he would receive a sentence of no more than one year in prison.[1] The court denied Petitioner's motion.[2]

2. On direct appeal, Petitioner argued that the Superior Court abused its discretion by refusing to allow him to withdraw his guilty plea.[3] On September 6, 2007, the Delaware Supreme Court affirmed Petitioner's conviction and sentence.[4]

3. Petitioner filed this *pro se* motion for postconviction relief on August 25, 2008. As best as the Court can discern, he asserts five grounds for relief:[5] (1) Counsel failed to file a suppression motion as requested by Petitioner; (2) Counsel promised him a particular sentence; (3) Counsel failed to conduct a proper investigation, adequately inform Petitioner of how the case was proceeding, or provide Petitioner with discovery; (4) Counsel misled Petitioner about the pertinent

---

[1] *State v. Jeremy L. Benson*, at 3:2-7:2 (Del. Super. Nov. 3, 2006) (Jurden, J.) (TRANSCRIPT) (hereinafter "Transcript of Sentencing").

[2] *Id.* at 7:3-7:5.

[3] *Benson v. State*, 933 A.2d 1249 (Table), 2007 WL 2523180 (Del.).

[4] *Id.*

[5] D.I. 38 and 39. Petitioner's motion and memorandum in support of his motion contains multiple claims that are scattered and repeated throughout. Petitioner enumerated six separate claims. Two of those enumerated claims are substantively the same.

sentencing guidelines; and (5) the prosecutor misled Petitioner by writing an incorrect presumptive sentence on Petitioner's Truth In Sentencing ("TIS") form when the prosecutor knew Petitioner had prior convictions.

I. Standard of Review: Two of Petitioner's Claims are Procedurally Barred.

4. Before addressing the merits of any postconviction relief motion, the Court must first determine whether the claims pass through the procedural filters of Superior Court Criminal Rule 61 ("Rule 61").[6] Rule 61(i) imposes four procedural imperatives on Petitioner's motion: (1) the motion must be filed within one year of a final order of conviction; (2) any basis for relief must have been asserted previously in any prior postconviction proceedings; (3) any basis for relief not asserted in the proceedings below as required by court rules is subsequently barred unless Petitioner can show cause and prejudice; and (4) any ground for relief must not have been formerly adjudicated in any proceeding unless warranted in the interest of justice.

5. This is Petitioner's first motion for postconviction relief. Accordingly, Rule 61(i)(2) does not apply. Under Rule 61(i)(1), Petitioner's motion must be filed within one year of a final order or conviction. Rule 61(m) defines what qualifies as a final judgment of conviction. Rule 61(m)(2) states that if a petitioner files a direct

[6] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

appeal, a judgment of conviction is final when the Delaware Supreme Court issues a mandate or order finally disposing of the case. Petitioner's motion is timely because the Delaware Supreme Court issued its final order affirming Petitioner's judgment of conviction on September 6, 2007, and Petitioner's motion was filed on August 25, 2008, less than a year after the date of the final order.

A. Petitioner's Argument That His Counsel Promised Him A Particular Sentence is Procedurally Barred.

6. Under Rule 61(i)(4), Petitioner's argument that his counsel promised him a particular sentence is procedurally barred because it has been formerly adjudicated. Petitioner's motion to withdraw his plea under Rule 32(d) was rejected by the Superior Court on identical grounds during the sentencing hearing.[7] Then, on direct appeal, the Delaware Supreme Court found no abuse of discretion by the Superior Court in denying the Rule 32(d) motion because there was no clear and convincing evidence that his lawyer had promised him that he would receive any particular sentence. There is no legal basis for the Court to revisit that determination here.

[7] Transcript of Sentencing at 7:3 - 7:5.

B. Petitioner's Prosecutorial Misconduct Claim Is Procedurally Barred.

7. Petitioner's next claim is that the prosecutor misled him by writing an incorrect presumptive sentence on his Truth In Sentencing ("TIS") form when the prosecutor knew Petitioner had prior convictions. Before addressing the merits of this claim, the Court must consider the procedural bar of Rule 61(i)(3) and determine if that procedural bar is overcome by Rule 61(i)(5).

8. Petitioner's claim is procedurally barred by Rule 61(i)(3) because it was not asserted in the proceedings below that led to Petitioner's conviction. If, however, Petitioner can demonstrate both cause for relief from the procedural default and prejudice from violation of his rights, then this claim would not be procedurally barred.[8] If Petitioner cannot prove prejudice, it is immaterial whether or not he can prove cause.[9] Cause is proven by showing "some external impediment preventing counsel from constructing or raising the claim."[10] The issue is procedurally barred if it was not raised on appeal and there was nothing preventing counsel from raising

---

[8] SUPER. CT. CRIM. R. 61(i)(3).

[9] *Grosvenor v. State*, 849 A.2d 33, 35 (Del. 2004).

[10] *Younger v. State*, 580 A.2d 552, 556 (Del. 1990) (citing *Murray v. Carrier*, 477 U.S. 478, 492 (1986)).

it.[11] Petitioner did not raise his prosecutorial misconduct claim on direct appeal,[12] and he has not shown any reason why it was not raised. Therefore, under Rule 61(i)(3), his claim should be procedurally barred.

9. Under Rule 61(i)(5), that procedural bar can be overcome if Petitioner has a "colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."[13] Petitioner must show that he has been deprived of a substantial constitutional right.[14]

10. Petitioner's allegation that the prosecutor committed misconduct is interpreted by the Court as a claim that the incorrect information on the TIS form resulted in a guilty plea that was not knowing, intelligent and voluntary, thus depriving Petitioner of a substantial constitutional right. While some of the information included on the TIS form was, indeed, incorrect, the error on the form does not invalidate Petitioner's otherwise valid plea of guilty.

---

[11] *Guinn v. State*, 882 A.2d 178, 182 (Del. 2005).

[12] *Benson v. State*, 933 A.2d 1249, 2007 WL 2523180 (Del. 2007) (Table).

[13] SUPER. CT. CRIM. R. 61(i)(5).

[14] *Jackson v. State,* 1995 WL 439270 at *3 (Del. 1995) (citing *Younger,* 580 A.2d at 555).

11. The TIS form signed by Petitioner contains the following information:[15]

OFFENSE	STATUTORY PENALTY	TIS GUIDELINE
Rape 4th	0-15	Up to 30 mos.@V
Rape 4th	0-15	"

TOTAL CONSECUTIVE MAXIMUM PENALTY: Incarceration: 30yrs

12. The numbers under the Statutory Penalty column can be interpreted as zero to fifteen years incarceration. The information under the TIS Guideline column, while in short hand, can be interpreted as advising Petitioner that the applicable presumptive sentence was up to thirty months incarceration. Underneath the chart on the TIS form is a line in bold-faced print which reads in all capitals "Total Consecutive Maximum Penalty," followed by smaller print reading "Incarceration."[16] "30yrs" was written next to "Incarceration," which informed Petitioner that the maximum penalty he faced was thirty years incarceration.[17]

---

[15] Truth-in-Sentencing Guilty Plea Form, D.I. 39, Ex. B. The Court has reproduced, in relevant part, what is contained on the form. A TIS form contains not only details about a defendant's possible sentence, but also information regarding the trial rights the defendant is giving up by pleading guilty and a series of questions about his decision to plead guilty.

[16] *Id.*

[17] *Id.*

13. The information on the TIS form is correct, except for the presumptive guidelines. By pleading guilty to two charges of Rape in the Fourth Degree, Petitioner faced the potential of zero to fifteen years incarceration per charge with a maximum penalty of thirty years.[18] Because Petitioner had been convicted of a violent felony in 1997, however, the correct presumptive guideline for an individual with his criminal history was zero to five years incarceration, not zero to thirty months incarceration.[19]

14. A TIS form is not the sole component of a guilty plea. While a TIS form should be filled out with care and be free from errors, the content of the form does not determine the validity of a defendant's plea. The Court must "address [a] defendant personally in open court and inform the defendant of" the consequences of pleading guilty.[20] This is commonly known as a plea colloquy. The TIS form is merely a part of that process.

---

[18] 2006 SENTAC Benchbook, p. 34-35.

[19] *Id.*

[20] SUPER. CT. CRIM. R. 11(C).

15. A guilty plea may be accepted only when the judge is satisfied that the plea is entered both knowingly and voluntarily.[21] To ensure a defendant enters a knowing and voluntary plea, the judge must be certain the defendant understands the direct consequences of pleading guilty.[22] The judge conducting the plea colloquy must explore certain consequences of the plea, as enumerated in Superior Court Criminal Rule 11.[23] That rule states, in pertinent part:

> [The defendant must understand] the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, the fact that the court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances...[24]

16. The record in this case shows that the Court complied with the requirements of Rule 11. The pertinent exchange follows:[25]

***

> The Court: The plea agreement indicates you will enter a plead [sic] guilty to two charges, first is a lesser included Offense of Count I that now charges the

---

[21] *State v. Ruiz,* 2007 WL 4577586 at * 2 (Del. Super.) (citing *Sullivan v. State,* 636 A.2d 931, 937 (Del. 1994) *cert denied,* 513 U.S. 833 (1994)); *Brown v. State,* 250 A.2d 503, 505 (Del. 1969)).

[22] *Brady v. United States,* 397 U.S. 742, 755 (1970).

[23] *State v. Barkley*, 724 A.2d 558, 559 (Del.1999).

[24] SUPER. CT. CRIM. R. 11(C).

[25] *State v. Jeremy L. Benson*, at 4:22-5:7, 5:19-6:4, 7:9-8:7. 8:11-8:17, 9:10-10:14 (Del. Super. Aug. 28, 2006)(TRANSCRIPT) (hereinafter "Transcript of Plea Colloquy").

felony Rape Fourth, also Count II charging a lesser included offense of Rape Fourth[...]; is that your understanding?

The Petitioner: Yes.

***

Court: Do you understand any recommendation that the presentence officer might make [from the Pre-Sentence Investigation], that your attorney might make, [and that the] prosecutor might make would be that, recommendations?

Petitioner: Yes.

Court: The Court can sentence you up to the statutory maximum penalty that we are going to review in a moment; do you understand that?

Petitioner: Yes.

***

Court: Do you understand that the charge of Rape in the Fourth Degree carries with it a statutory penalty of up to 15-years in jail, and a fine that can be imposed in the discretion of the Court; do you understand that?

Petitioner: Yes.

Court: There is a truth in sentencing guideline applicable to this offense that would recommend to the Court a sentence of up to 30 months in jail is appropriate for this offense; do you understand that?

Petitioner: Yes.

Court: Have you discussed the truth in sentencing guidelines with your attorney?

Petitioner: Yes

Court: Do you understand how they apply in this case?

Petitioner: Yes.

Court: There is also a requirement that you register as a sex offender; do you understand that?

Petitioner: Yes

Court: Have you discussed that requirement with your attorney?

Petitioner: Yes

***

Court: You are facing two counts of Rape in the Fourth Degree, therefore facing in total up to 30-years in jail for those two charges; do you understand that?

Petitioner: Yes.

Court: Anyone promised you in this case what sentence you would receive?

Petitioner: No.

***

Court: Count I of the indictment as amended charges Rape in the Fourth Degree in violation of Title 11, Section 770 of the Delaware Code. The charge reads Jeremy Benson, on before the 19th-day of March 2006, in the County of New Castle, State of Delaware, did intentionally engage in sexual intercourse with another person and the victim had not yet reached her 18th birthday, and the defendant, you, were 30 years of age or older at the time of the offense. What is your plea to that charge?

Petitioner: Guilty

Court: Did you in fact, commit that offense?

Petitioner: Yes

[Count II is read, Petitioner pleads guilty, and admits that he in fact committed the offense]

Court: The Court is satisfied that both pleas have been entered knowingly, intelligently and voluntarily, and will accept those pleas.

17. The Court described in detail the nature of the charges against Petitioner, informed him that he was facing a maximum penalty of up to thirty years incarceration, and determined that he was aware of the requirement to register as a sex offender. While the Court mentioned the incorrect sentencing guideline, it met the requirements of Rule 11 because it described the non-binding nature of the

guidelines and ensured that Petitioner knew that the Court had the final word on the length of his sentence.[26]

18. The Superior Court has considered whether an effect of error on a TIS form will negate an otherwise valid guilty plea. In *State v. Banks*, the Court denied a motion to withdraw a guilty plea based on the ground that a TIS form incorrectly stated the presumptive guideline for an offense.[27] Prior to sentencing, a defendant may move to withdraw his guilty plea under Rule 32 upon a showing of "any fair and just reason." In *Banks*, the TIS form stated that the guideline for first degree reckless endangerment was zero to fifteen months incarceration, but the defendant's juvenile record enhanced the guideline to zero to thirty months. The defendant argued that his guilty plea was not knowingly entered because the sentencing guideline on the TIS form was incorrect. The Court rejected his argument:

> The fact that there may be a discrepancy in the announced guideline of 0-30 months, instead of 0-15 months on the Reckless Endangering charge does not effect [sic] substantial rights. The defendant must be informed as to the maximum penalty; guidelines are for the court's

[26] *See Teti v. State*, 905 A.2d 747, 2006 WL 1788351 (Del. 2006) (Table) ("Sentencing guidelines are voluntary and not binding on the sentencing judge.") (citing *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989)).

[27] *State v. Banks*, 2007 WL 625366 (Del. Super.).

consideration. They are not binding.[footnote omitted] The maximum possible penalty was correctly stated, and that is what controls.[28]

19. Petitioner's claim must be procedurally barred. The Court's plea colloquy met the requirements of Rule 11. *Banks* supports the conclusion that the error on the TIS form did not make Petitioner's plea improper. Petitioner has a higher burden to meet than the defendant in *Banks*. In *Banks,* the court considered the issue in the context of a motion to withdraw a guilty plea under Rule 32. Petitioner's motion is subject to the requirements of Rule 61.[29] Under Rule 61, Petitioner is required to meet a higher threshold for relief,[30] and he has not met that burden. Petitioner's guilty plea was knowing and voluntary. He was not deprived of a substantial constitutional right. Petitioner has not met the requirements of Rule 61(i)(5); therefore, the procedural bar in Rule 61(i)(3) precludes this claim.[31]

---

[28] *Banks*, 2007 WL 625366 at * 1 (citing SUPER. CT. CRIM. R. 11(c); SUPER. CT. CRIM. R. 11(h)).

[29] *Blackwell v. State*, 736 A.2d 971, 972-973 (Del. 1999).

[30] *Patterson v. State*, 684 A.2d 1234, 1237 (Del. 1996) ("Rule 32(d), as opposed to Rule 61, contemplates a lower threshold of cause sufficient to permit withdrawal of a guilty plea.").

[31] 2006 SENTAC Benchbook, p. 34-35.

C. Petitioner's Three Remaining Claims For Ineffective Assistance Of Counsel Pass Rule 61's Procedural Filters And Will Be Considered On The Merits.

20. Petitioner's remaining ineffective assistance of counsel claims were not asserted in or implicated by the proceedings leading to Petitioner's judgment of conviction. These claims are not barred by Rule 61(i)(3) and 61(i)(4) because they could not have been raised during trial or on direct appeal.[32]

II. Petitioner's Ineffective Assistance Of Counsel Claims Fail Under *Strickland v. Washington*.

21. The Court evaluates ineffective assistance of counsel claims by applying the two-part test set forth in *Strickland v. Washington*.[33] Under *Strickland*, Petitioner must "show that counsel's representation fell below an objective standard of reasonableness; and there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[34] Under the first prong, the court's review of counsel's conduct must be undertaken in light of the "strong presumption that the representation was professionally

---

[32] *State v. Sisson*, 2008 WL 162825 at *4 (Del. Super.).

[33] 466 U.S. 668 (1984).

[34] *Albury v. State*, 551 A.2d 53, 58 (Del. 1988) (citing *Strickland*, 446 U.S. at 688, 694).

reasonable."[35] Under the second prong, Petitioner must affirmatively demonstrate prejudice by showing "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[36] Both prongs must be satisfied in order for an ineffective assistance of counsel claim to be successful. If either prong is not met, then Petitioner's claim must fail.[37]

A. Petitioner Failed to show that Counsel's Decision To Not File A Suppression Motion Fell Below An Objective Standard Of Reasonableness.

22. Petitioner alleges that damaging statements he made to the police were illegally obtained because no *Miranda* warning was administered until after "extensive questioning" had occurred.[38] Petitioner claims that if Counsel had filed a suppression motion, as he requested, and the statements had been suppressed, Petitioner would not have pleaded guilty but would have demanded to go to trial.[39]

---

[35] *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996) (citing *Flamer v. State,* 585 A.2d 736, 753 (Del. 1990)).

[36] *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

[37] *Strickland*, 466 U.S. at 697.

[38] D.I. 39.

[39] *Id.*

23. Under Rule 61(g)(2), the Court requested that Petitioner's counsel file an affidavit in response to Petitioner's claims of ineffective assistance. Counsel stated in his affidavit that Petitioner never requested that Counsel file a motion to suppress Petitioner's statement.[40] In fact, Counsel reviewed Petitioner's taped statement and did not believe there were any meritorious grounds to support suppression.[41]

24. As the *Strickland* court noted, "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable."[42] Counsel's affidavit provided two strategic reasons for his decision not to pursue a motion to suppress Petitioner's statement. First, Petitioner's

---

[40] Aff. of Def. Counsel, D.I. 44, ¶ 4.

[41] *Id*. at ¶ 2. The Court is also aware of Petitioner's motion for default judgment, filed on November 14, 2008, based on his mistaken belief that Counsel did not respond to the Court's request for an affidavit regarding Petitioner's ineffective assistance claim. In fact, Counsel's timely response was received on October 21, 2008 . As a result, Petitioner's motion is denied. The Court is also aware that after filing his motion for default judgement, Petitioner requested and received an official Superior Court Docket Sheet. At this time, Petitioner discovered that Counsel had, in fact, timely filed an affidavit, but did not send a copy to Petitioner. Without citation to any specific rule, Petitioner now argues that Counsel violated "a well known fact of Superior Court Rules and Procedures" by failing to provide Petitioner with "a certificate of service with a copy of [Counsel's] affidavit." Therefore, Petitioner requests that the Court reject Counsel's affidavit as time barred, and that his motion for default judgment be granted. The Court knows of no such rule which would justify the relief requested by Petitioner. In fact, this court has previously declined to sanction an attorney who failed to file a requested affidavit after extending the filing deadline twice. *See In re Petition of Murphy,* 1999 WL 1098209 (Del. Super.). Relief was also denied to the petitioner in that case. *Id.* Therefore, the Court sees no grounds upon which Petitioner's motion for default judgement may be granted.

[42] *Strickland*, 466 U.S. 668, 690-691; *State v. Mathis*, 2008 WL 3271148 at *2 (Del. Super. 2008).

statement could have been used at trial as a defense to some of Petitioner's charges, so seeking suppression of the statement would have been unwise.[43] Second, the "he said, she said" nature of the case made it very likely that Petitioner would be required to testify in his own defense, and any testimony inconsistent with his statement to the police would have made that statement admissible for impeachment regardless of any *Miranda* violation.[44] Counsel's affidavit demonstrates that he made reasonable strategic choices after investigating the law and facts relevant to plausible options in Petitioner's case. Petitioner has failed to show that Counsel's decision not to file a motion to suppress fell below an objective standard of reasonableness. Accordingly, this claim must fail.

B. Petitioner Failed To Show That Counsel Did Not Conduct A Proper Investigation, Keep Petitioner Informed, Or Provide Petitioner With Discovery.

25. Petitioner alleges that his counsel failed properly to investigate the facts surrounding his charges, keep him informed of the status of his plea negotiations, and

---

[43] D.I. 44, at ¶ 2.

[44] *Id.* at ¶ 3. Counsel's position is supported by law. *Foraker v. State*, 394 A.2d 208, 212 (Del. 1978) ("The shield provided by Miranda cannot be perverted into a license to use perjury by way of defense, free from the risk of confrontation with prior inconsistent utterances.") (quoting *Harris v. New York*, 401 U.S. 222, 226 (1975)).

provide him with discovery materials.[45] Petitioner has provided the Court with no specific evidence of these allegations. The Court need not address Rule 61 claims that are conclusory and unsubstantiated.[46] Even if the Court were to address this claim, Petitioner's statements in court regarding his Counsel are presumed true and, absent clear and convincing evidence, Petitioner is bound by his answers.[47] During his plea colloquy Petitioner was asked questions about Counsel's representation:[48]

***

> The Court: I have two documents that I need to review, first is your plea agreement, second is your truth in sentencing guilty plea form. You have those there in front of you. We will get them for you. You have them there now, sir?
>
> The Petitioner: Um-hmm
>
> The Court: Both of those documents appear to be signed by you at the bottom of the page; is that correct?
>
> The Petitioner: Correct
>
> The Court: If you pull that microphone down. Did you read both documents carefully before you signed them?
>
> The Petitioner: Yes.

---

[45] D.I. 38 and 39.

[46] *State v. Jordan*, 1994 WL 637299 at *3 (Del. Super.).

[47] *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

[48] *State v. Jeremy L. Benson* (Del. Super. Aug. 28, 2006)(TRANSCRIPT) (hereinafter "Transcript of Plea Colloquy").

The Court: Do you understand what they were and agreeing to them by signing those documents?

The Petitioner: Yes

The Court: Did you have an opportunity to review them both carefully with Mr. Capone? [Petitioner's Counsel]

The Petitioner: Yes

The Court: Did he answer any questions you might have had about them to your satisfaction?

The Petitioner: Yes, he did.

***

The Court: Do you understand that by entering these pleas of guilty you are not going to have a trial. Therefore, you are going [to] give up all of the rights associated with a trial. If you look at the top of the page on that truth in sentencing guilty plea form, you will see the rights listed there. Do you see them?

The Petitioner: Yes

The Court: Have you reviewed those carefully with Mr. Capone?

The Petitioner: Yes

***

The Court: Have you discussed the truth in sentencing guidelines with your attorney?

The Petitioner: Yes

***

The Court: There is also a requirement that you register as a sex offender; do you understand that?

The Petitioner: Yes

The Court: Have you discussed that requirement with your attorney?

The Petitioner: Yes

***

The Court: Do you have any further questions for Mr. Capone at this time?

The Petitioner: No

26. Petitioner's answers in the plea colloquy demonstrate that he reviewed with Counsel the plea agreement and TIS form, and that he understood their contents. Petitioner's answers also show that he reviewed with Counsel the trial rights he was giving up by choosing to plead guilty, as well as the consequences of his conviction. Petitioner's answers reflect that Petitioner was satisfied with Counsel's representation and had no further questions for him. Indeed, he stated as much on the TIS form. Petitioner has failed to produce clear and convincing evidence to the contrary.[49] Petitioner's claim that Counsel's representation fell below an objective standard of reasonableness must fail.

C. Petitioner Failed To Show That Counsel Misled Petitioner About Sentencing Guidelines.

[49] *Somerville,* 703 A.2d at 632.

27. Petitioner alleges that Counsel misled him regarding the sentencing guidelines associated with the crimes with which he was charged.[50] Petitioner's evidence pertaining to this claim consists of his allegation that Counsel provided him with incorrect information regarding the applicable sentencing guidelines in his case, and the content of a witness's affidavit recounting a phone conversation between Petitioner and Counsel overheard by the witness. This claim must fail because Petitioner made statements to the contrary in open court. Statements made by a petitioner during a guilty plea colloquy are presumed to be truthful, constitute a "formidable barrier" in collateral proceedings, and absent clear and convincing evidence, Petitioner is bound by his answers.[51]

28. The Court engaged Petitioner in a plea colloquy and questioned Petitioner to determine whether he understood his possible sentence, the sentencing guidelines, and if Petitioner had reviewed the possible sentence and guidelines with Counsel.

29. Petitioner's answers in the plea colloquy demonstrate that he was aware of his possible sentence, that he understood how the sentencing guidelines function, including the fact that they are non-binding, and that he was satisfied with Counsel's

---

[50] D.I. 38 and 39.

[51] *Somerville,* 703 A.2d at 632.

advice regarding his sentence. Petitioner has failed to produce clear and convincing evidence to the contrary. Petitioner's colloquy answers are presumed true and he is bound by those answers.[52]

30. The Delaware Supreme Court rejected an appeal of a denied motion for postconviction relief based on a similar claim in *Jones v. State*.[53] In *Jones*, the petitioner claimed that he received ineffective assistance of counsel because his attorney allegedly failed to inform him that the Superior Court is not bound by the TIS guidelines. The petitioner claimed that without being aware of the court's permitted discretion with regards to the sentencing guidelines, he could not have entered a knowing and voluntary guilty plea. The Court rejected this argument, and held that the petitioner was bound by the statements he made during the plea colloquy, which had demonstrated his awareness of the possible consequences of his plea.[54]

---

[52] *Somerville,* 703 A.2d at 632.

[53] *Jones v. State*, 737 A.2d 530, 1999 WL 652056 (Del.).

[54] *Id.* at *2 (citing *Somerville,* 703 A.2d at 632). The Supreme Court's reasoning highlighted the fact that during the plea colloquy Jones was made aware of the maximum sentence he could receive. *Id*. As discussed previously in this opinion, Petitioner was made aware that he could be sentenced up to fifteen years in prison for both counts of Rape in the Fourth Degree, resulting in a maximum combined sentence of thirty years incarceration. *See* Transcript of Plea Colloquy at 9.

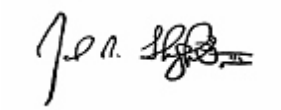
31. Petitioner has failed to show that Counsel's representation fell below an objective standard of reasonableness and that he has suffered actual prejudice. Accordingly, Petitioner's claim is denied.

III. Petitioner's Request For Appointment Of Counsel Is Denied.

32. Petitioner has requested that the Court appoint him counsel. In Delaware, the law is well settled "that there is no constitutional right to counsel during post-conviction proceedings."[55] Pursuant to Rule 61(e)(1), the Court will appoint counsel only in the exercise of its discretion and for good cause shown. Petitioner has failed to meet the good cause standard because none of his claimed grounds for relief come close to satisfying the burden imposed upon him by *Strickland v. Washington*. In addition, the legal and factual issues he has presented are neither novel nor complex.

33. Based upon the foregoing, Petitioner's motion for Postconviction Relief and request for court appointed counsel are **DENIED.**

IT IS SO ORDERED.



Judge Joseph R. Slights, III

Original to Prothonotary

---

[55] *Floyd v. State*, 1992 WL 183086 at *1 (Del. 1992).